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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/724,284	11/28/2000	Richard Leach Tagg		7550

7590

10/20/2003

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EXAMINER

ADDIE, RAYMOND W

ART UNIT	PAPER NUMBER
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3671

DATE MAILED: 10/20/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/724,284

Applicant(s)

TAGG, RICHARD LEACH

Examiner

Raymond W. Addie

Art Unit

3671

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 August 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 18-37 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 18-37 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 18-25, 29-37 are rejected under 35 U.S.C. 102(e) as being anticipated by

Striefel et al. # 6,059,491.

Striefel et al., discloses a barrier (I) comprising:

At least one barrier section (10) having a comparatively narrow upright portion (26).

A comparatively wide base portion (24), including a female (52) and a male end (54).

Said female and male ends having corresponding projections and recesses that can be mated together to form a hinge pin receiving aperture (59, 65).

An additional barrier section(s) (12, 14) identical to the at least one barrier section (10) and being mate-able with said at least one barrier section.

At least one hinge pin (64) that can be passed between said barrier section and an additional barrier section, so that said mated barrier sections can be disposed in a rectilinear or curvilinear arrangement, in a gapless orientation, regardless of the angle of articulation existing between said barrier section and said additional barrier section. See col. 3, line 39-col. 4, line 49.

In regards to Claims 20, 21, 23, 24, 31-33 Striefel et al. discloses the projection on the barrier section has a partly cylindrical, surface of rotation and a corresponding recess, having a corresponding surface of rotation. Striefel et al. further discloses the "nose section" of the barrier female end includes a vertical bore, to receive a hinge pin.

The barrier further comprising a vertical bore disposed in each projection for receiving a hinge pin (64) such that each barrier may be articulated relative to each additional barrier section.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over Striefel et al. #

6,059,491 in view of Smith et al. # 4,240,766.

Striefel et al. discloses a modular barrier system comprising a plurality of barrier sections (10) interconnected with hinge pins, but does not disclose using hinge pins having male threaded ends. However, Smith et al. teaches a traffic delineator (1) comprising: A vertical post (5) having a male threaded end and a generally dome-shaped base (2) having a female threaded recess (8) for receiving said post (5).

Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to provide the traffic barrier of Striefel et al., with a hinge assembly, as taught by Smith et al., in order to facilitate temporary assembly of the barrier segment. See Smith et al., Col. 2, ln 22-col. 3, ln 17.

3. Claims 27, 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Striefel et al. '491 in view of Smith et al. # 4,240,766 as applied to claim 26 above, and further in view of Pickett # 4,111,401 and WO 97/09485, reference to Adcock. Striefel et al. in view of Smith et al. discloses a modular barrier system interconnected with an hinge assembly, but does not disclose the use of tension straps. However, Pickett '401 teaches a barrier system (10) comprising a plurality of identical barrier sections (20), which are interconnected by disposing a tension strap (40) to encircle a male/female joint assembly, having corresponding surfaces of rotation. Adcock teaches a barrier system comprising a plurality of barrier sections (10, 11, 12) having a plurality of grooves, disposed in a comparatively narrow upright portion of each barrier section (10, 11, 12) for receiving a tension strap (3) that crosses from one side of a barrier to a 2nd side of the barrier, such that said plurality of barrier sections are anchored to one another to form an elongated, continuous barrier. Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to provide the barrier system of Striefel et al. in view of Smith et al., with a tension strap that

crosses from one side of a barrier to another side of said barrier, and encircles the pivotable joint between adjacent barriers, as taught by Pickett and Adcock, in order to form a continuous anchored barrier. See Pickett Col. 4; Adcock Page 5.

Response to Arguments

4. Applicant summarizes the interview of 6/9/2003, in which the Applicant and Examiner concur that the Office Action of 5/21/2003 was non-final, in spite of a typographical error in the PTO form 326. Hence, prior to this Office Action, the Application was in a non-final status.

5. Applicant argues against the reference to Striefel et al. # 6,059,491 by stating "The inner surfaces of the vertically aligned bore could be viewed as providing various surfaces of rotation for the profile of the barrier in Striefel et al., however, such vertically aligned bores (59) cannot reasonably be seen as part of the profile of the barrier segment, which is comprised of a series of upright endwall portions (70, 72, 74, 76), in contrast to the presently-claimed invention, in which the surfaces of rotation are, in fact part of the profile of the comparatively wide base portions (12)".

However, the Examiner does not concur.

The vertically aligned bores (59) of the cited prior art, are defined by a plurality of connectors (60, 62), which are disposed on opposite ends of the barrier. Further, the connectors (60, 62) are integral with the upper (26) and lower portions (24) of the barrier. As agreed by the Applicant (page 11, paragraph 3) of Applicant last reply; the connectors (60, 62) clearly define a surface of rotation. Still further, the connectors (60, 62) define the outermost ends of both the upper and lower portions of the barrier, thereby defining an end profile of both upper and lower portions of the barrier. Therefore the argument is not persuasive and the rejection is upheld.

The Applicant further argues "the substantially horizontal planar base wall (24), which can be viewed as being the wide base portion, does not comprise a nose nor corresponding cavity, as disclosed and claimed by the present Applicant".

However, the limitation cited in the independent claims (18, 25, 34) "a comparatively wide base portion including, at a female end of said barrier section, a nose having a surface that is a surface of rotation of a profile of said comparatively wide base portion and, at a male end, a correspondingly shaped cavity for allowing said female end of said barrier section to be brought up to a male end of an adjacent barrier section"; does not specifically define the structural features of a "nose having a surface that is a surface of rotation".

Therefore, the cited limitation has been granted the "broadest reasonable interpretation of the structural requirements necessary to form "at a female end of said barrier section, a nose having a surface that is a surface of rotation".

To that extent, Striefel et al. discloses a barrier section having opposing ends, each having a plurality of projections (60, 62) respectively, each forming a "nose having a surface of rotation", that are spaced vertically apart, and thereby defining a plurality of cavities between said projections/connectors (60, 62); such that identical barrier sections, can be interconnected by vertical alignment of said projections and the apertures (59), which co-operatively receive a hinge pin (64), in order to form an elongated barrier system, in either a straight line or curvilinear arrangement. Therefore, the argument is not persuasive and the rejection is upheld.

Applicant further argues "In contrast, pending claim 18 for example, recites that the nose is part of the female end of the barrier section...Similarly, the opposite end of the barrier section does not comprise any feature that could be deemed equivalent to the corresponding cavity as defined in Applicant's claims".

However, since the cited prior art discloses --a plurality of projections (60, 62) defining a plurality of cavities therebetween--; the prior art is seen to disclose additional structure, not claimed by the Applicant, and therefore, since the reference to Striefel et al., discloses the invention claimed, the fact that it discloses additional structure not

claimed is irrelevant. In this case, Striefel et al. discloses a plurality of "nose portions" having a surface of rotation, and a plurality of cavities (61), defined by said projections/connectors (60, 62).

Therefore, the argument is not persuasive and the rejection is upheld.

Applicant suggests "the Examiner states in his rejection that Striefel et al. discloses 'a comparatively wide base portion, including a female (52) and a male end (54)'...Applicant cannot agree with the Examiner's application of Striefel et al...since independent claims 18, 25, 34 do not recite a comparatively wide base portion with male and female ends...Instead, it is the barrier section taken as a whole, which comprises male and female ends, not simply the base portion...Further, in Striefel et al., that wing walls (52, 54) extend the entire length of the barrier which would appear to be contrary to the Examiner's interpretation".

However, the barrier disclosed by Striefel et al., is a singular, integral barrier element having a narrow top portion, a comparatively wide base portion, a female end, and a male end; in which all portions of said barrier are integral with each other. Therefore, the argument put forth by the Applicant does not show patentably distinction between the claimed invention and the disclosed barrier of the cited prior art. Hence, the argument is not persuasive and the rejection is upheld.

Applicant then argues "that elements 52, 54, the wing walls of the Striefel et al. barrier, cannot be considered to be female and male ends, respectively...The wing walls (52, 54) do not cooperate with the corresponding features of adjacent barrier sections".

The Examiner does not concur.

Fig. 5 of Striefel et al. clearly shows a succession of 3 barrier elements (10, 12, 14) interconnected at opposing ends via said male and female ends as defined by the co-operating projections (60, 62) and recesses (61) of said adjacent barrier elements. See also col. 2, Ins. 26-31.

Applicant furthers the prior argument by stating "the wing walls are not 'ends' as such, but, rather, project longitudinally of the barrier, and should therefore not been seen as corresponding to the male and female ends of the presently-claimed invention".

However, col. 2, Ins. 45-47 positively recite "barrier 10, is a hollow molded plastic container, having a pair of substantially upright spaced-apart opposed sidewalls (18, 20)". Further, nowhere in the disclosure of Striefel et al. are wing walls (52, 54) disclosed as being separate or mechanically attached elements.

Hence, wing walls (52, 54) are integrally molded features of the barrier, and thus define the longitudinal ends of the barrier.

Therefore, the argument is not persuasive and the rejection is upheld.

Applicant then puts forth arguments against the First Office Action of 2/24/02, in which claims 1-14 were pending and have since been cancelled, without prejudice, in favor of Claims 18-37.

Therefore Applicant's arguments are moot, with respect to the Last Office Action.

Applicant then argues "that a significant amount of modification would be required to the portable barrier of Striefel et al., in order to arrive at that being claimed by Applicant: The base portion in Striefel et al. would have to be altered to provide it with a nose portion, thereby providing it with a surface of rotation".

However, as cited by Applicant in page 11, paragraph 3 "The inner surfaces of the vertically aligned bore could be viewed as providing various surfaces of rotation for the profile of the barrier in Striefel et al.".

Therefore, it appears as though Applicant is contradicting a previously admitted equivalence between the prior art of record and the claimed invention.

Hence, the argument is not persuasive and the rejection is upheld.

Applicant then argues "the cavity and the nose being adapted to fit together during sue to that there are no gaps between the two base portions of adjacent barrier sections... This type of alteration would have an effect on the positioning and type of connectors disposed further upward on the barrier sections and would necessitate

additional modifications for enabling the adjacent barrier sections to be fitted together without intervening gaps...such modifications to the applied art...would likely result in adjacent barrier sections being unable to be moved about the hinge pins, as so required.

The Examiner does not concur. No modification nor alteration of the cited prior art would be necessary to enable the barrier sections to be moved about the hinge pins. Further, there is no evidence that any gap would exist between interconnected barrier sections as suggested by the Applicant. As clearly shown in Fig. 2 barrier elements 12 and 10 as well as barrier elements 10 and 14 are "gaplessly" interconnected, and as shown in Fig. 5, the barrier elements can be disposed in either a straight line or in a curvilinear arrangement.

Therefore, the argument is not persuasive and the rejection is upheld.

Finally Applicant argues "Initially, it is questionable with the ends of the barrier sections taught in Striefel et al. can even be considered to be recesses".

However, Striefel et al. absolutely, positively recites a plurality of recesses (61); in col. 3, ln. 24.

Therefore, the argument is not persuasive and the rejection is upheld.

Conclusion

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Raymond Addie whose telephone number is (703) 305-0135. The examiner can normally be reached on Monday-Friday from 7:00 am to 2:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will, can be reached on (703) 308-3870. The fax phone number for this Group is (703) 872-9326.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1113.



Thomas B. Will
Supervisory Patent Examiner
Group 3600

RWA
10/08/2003